

Bruce T. Beesley



Honorable Bruce T. Beesley
United States Bankruptcy Judge

Entered on Docket

October 02, 2012

KEITH J. SHAPIRO, ESQ.

Illinois Bar No. 6184374

NANCY A. PETERMAN, ESQ.

Illinois Bar No. 6208120

GREENBERG TRAURIG, LLP

77 West Wacker Drive, Suite 3100

Chicago, Illinois 60601

Telephone: 312-456-8400

Facsimile: 312-456-8435

Email: shapirok@gtlaw.com

Email: petermann@gtlaw.com

BOB L. OLSON, ESQ.

Nevada Bar No. 3783

GREENBERG TRAURIG, LLP

3773 Howard Hughes Parkway,

Suite 400 North

Las Vegas, Nevada 89169

Telephone: 702-792-3773

Facsimile: 702-792-9002

Email: olsonb@gtlaw.com

Counsel for Debtor and Debtor-in-Possession

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA**

In re:

SHENGDATECH, INC.,

Debtor.

Case No. BK-11-52649

Chapter 11

**FINDINGS OF FACT, CONCLUSIONS
OF LAW REGARDING
CONFIRMATION OF THE FIRST
AMENDED CHAPTER 11 PLAN OF
REORGANIZATION, AS MODIFIED**

Hearing Date: August 30, 2012

**Hearing Time: 10:00 a.m. (prevailing
Pacific Time)**

1 WHEREAS, on August 19, 2011 (the “Petition Date”), ShengdaTech, Inc. (the “Debtor”)
2 filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the
3 “Bankruptcy Code”).

4 WHEREAS, on June 21, 2012, the Debtor proposed the *First Amended Chapter 11 Plan of*
5 *Reorganization*, dated June 20, 2012 [Docket No. 522], which was subsequently modified on June 26,
6 2012 [Docket No. 539] and on August 30, 2012 [Docket No. 652] (the “Plan”).¹

7 WHEREAS, on June 25, 2012, the Court held a hearing on the adequacy of the *First Amended*
8 *Disclosure Statement for the First Amended Chapter 11 Plan of Reorganization*, dated June 20, 2012
9 [Docket No. 523], which was subsequently modified on June 26, 2012 [Docket No. 540] (the
10 “Disclosure Statement”).

11 WHEREAS, on July 3, 2012, the Court entered an Order (the “Solicitation Procedures Order”)
12 [Docket No. 545], pursuant to which the Court, among other things, (i) approved the Disclosure
13 Statement pursuant to section 1125 of the Bankruptcy Code, (ii) established procedures for the
14 solicitation and tabulation of votes to accept or reject the Plan, (iii) established August 16, 2012, at
15 5:00 p.m. (prevailing Pacific Time) as the Voting Deadline; (iv) established August 16, 2012, at 4:00
16 p.m. (prevailing Pacific Time) as the deadline by which all objections to confirmation of the Plan
17 must be Filed with the Court and received by certain parties listed in the Solicitation Procedures
18 Order (the “Objection Deadline”); and (v) scheduled a hearing on August 30, 2012, at 10:00 a.m.
19 (prevailing Pacific Time) to consider confirmation of the Plan (the “Confirmation Hearing”).

20 WHEREAS, on July 12, 2012, Jeffry S. Stein of The Garden City Group, Inc., which serves
21 as the notice, claims and solicitation agent to the Debtor (the “Claims Agent”), executed an affidavit
22 of service (which the Claims Agent Filed with the Bankruptcy Court on July 13, 2012 [Docket No.
23 558]) regarding the mailing of the Confirmation Hearing Notice (as defined in the Solicitation
24 Procedures Order) and the Solicitation Packages (as defined below) in accordance with the terms of
25 the Solicitation Procedures Order (the “Solicitation Affidavit”).

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28 ¹ Capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Plan. The rules of interpretation set forth in Article I of the Plan are fully incorporated herein.

1 WHEREAS, the Debtor caused the *Notice of (A) Approval of Disclosure Statement; (B)*
2 *Hearing to Consider Confirmation of the Plan; (C) Deadline for Filing Objections to Confirmation of*
3 *the Plan; and (D) Deadline for Voting on the Plan* (the “Publication Notice”) to be published in *The*
4 *Wall Street Journal* (Global Edition) on July 18, 2012, as set forth in the *Amended Affidavit of*
5 *Publication of Notice in the Wall Street Journal of (A) Approval of Disclosure Statement; (B)*
6 *Hearing to Consider Confirmation of the Plan; (C) Deadline for Filing Objections to Confirmation of*
7 *the Plan; and (D) Deadline for Voting on the Plan* [Docket No. 590].

8 WHEREAS, on August 1, 2012, the Debtor filed the Plan Supplement [Docket No. 591].

9 WHEREAS, the Debtor was exempt from serving copies of the Plan Supplement pursuant to
10 the Solicitation Procedures Order.

11 WHEREAS, on August 27 2012, the Claims Agent Filed the *Declaration of Craig E. Johnson*
12 *of The Garden City Group, Inc. Certifying the Methodology for the Tabulation of Votes on and*
13 *Results of Voting with Respect to Debtor’s First Amended Chapter 11 Plan of Reorganization* (the
14 “Voting Affidavit”) [Docket No. 614].

15 WHEREAS, on August 27, 2012, the Debtor Filed the *Declaration of Michael D. Kang in*
16 *Support of Confirmation of the First Amended Chapter 11 Plan of Reorganization, as Modified* (the
17 “Kang Declaration”) [Docket No. 615].

18 WHEREAS, on August 27, 2012, the Debtor Filed the *Debtor’s Memorandum of Law in*
19 *Support of Confirmation of the First Amended Chapter 11 Plan of Reorganization, as Modified* (the
20 “Memorandum of Law”) [Docket No. 616].

21 WHEREAS, no objections to confirmation of the Plan were Filed other than the objection to
22 the scope of the Plan’s release and injunction provisions, as further discussed in the *Objection of*
23 *Lead Plaintiffs to Disclosure Statement for the Chapter 11 Plan of Reorganization* [Docket No. 512],
24 which objection is resolved pursuant to the terms of the Confirmation Order.

25 WHEREAS, on August 30, 2012, the Court held the Confirmation Hearing.

26 WHEREAS, the Court has reviewed the Plan, as modified in the Confirmation Order and in
27 the form attached to the Confirmation Order, the Disclosure Statement, the Solicitation Procedures
28 Order, the Solicitation Affidavit, the Voting Affidavit, the Kang Declaration, the Memorandum of

1 Law and all other pleadings, statements and comments submitted to the Court in connection with the
2 Confirmation Hearing.

3 WHEREAS, the Court has (i) considered the statements of counsel at the Confirmation
4 Hearing, (ii) considered all evidence proffered or adduced at the Confirmation Hearing, and (iii)
5 taken judicial notice of the entire record of the Chapter 11 Case.

6 NOW, THEREFORE, after due deliberation and good cause appearing therefor, the Court
7 hereby makes and issues the following Findings of Fact and Conclusions of Law²:

8 A. Jurisdiction and Venue. On the Petition Date, the Debtor commenced the Chapter 11
9 Case in good faith by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code.
10 The Debtor is (and was as of the Petition Date) qualified to be a debtor under section 109 of the
11 Bankruptcy Code. The Court has jurisdiction over the Chapter 11 Case pursuant to 28 U.S.C. § 1334.
12 These are core proceedings pursuant to 28 U.S.C. § 157(b)(2)(L). The Court has subject matter
13 jurisdiction over the Chapter 11 Case pursuant to 28 U.S.C. §§ 157(b)(1) and 1334. Venue was
14 proper as of the Petition Date and continues to be proper before this Court as of the date hereof
15 pursuant to 28 U.S.C. §§ 1408 and 1409.

16 B. Modifications to the Plan. The modifications to the Plan set forth in Paragraph 6 of
17 the Confirmation Order (the “Plan Modifications”) constitute technical or non-material changes to the
18 Plan and do not materially or adversely affect or change the treatment of any Claims or Equity
19 Interests. Accordingly, pursuant to section 1127(a) of the Bankruptcy Code and Rule 3019 of the
20 Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the Plan Modifications do not
21 require additional disclosure under section 1125 of the Bankruptcy Code or the re-solicitation of
22 votes under section 1126 of the Bankruptcy Code, nor do they require that the Holders of Claims or
23 Equity Interests be afforded an opportunity to change any previously-cast acceptances or rejections of
24 the Plan.

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27 ² These Findings of Fact and Conclusions of Law constitute the Court’s findings of fact and conclusions of law under
28 Federal Rule of Civil Procedure 52, as made applicable herein by Bankruptcy Rules 7052 and 9014. Any and all findings
of fact herein shall constitute findings of fact even if stated as conclusions of law, and any and all conclusions of law
herein shall constitute conclusions of law even if stated as findings of fact.

1 C. Judicial Notice. The Court takes judicial notice of the docket of this Chapter 11 Case
2 maintained by the Clerk of the Court, including, without limitation, all pleadings and other
3 documents filed, all orders entered, all hearing transcripts and all evidence and arguments made,
4 proffered or adduced at the hearings held before the Court during this Chapter 11 Case, including,
5 without limitation, the Confirmation Hearing.

6 D. Burden of Proof. The Debtor, as the plan proponent, has met its burden of proving the
7 elements of section 1129 of the Bankruptcy Code by a preponderance of the evidence as determined
8 herein.

9 E. Solicitation and Notice. To obtain the requisite acceptances of the Plan, on or about
10 July 10, 2012 (the "Solicitation Commencement Date"), the Debtor commenced the solicitation of
11 votes to accept or reject the Plan from the Holders of Claims and Equity Interests in Classes 3, 4, 5
12 and 6 (the "Voting Classes") who held such Claims or Equity Interests as of April 3, 2012 (the
13 "Voting Record Date"). To accomplish this, the Debtor caused the Claims Agent to transmit to (1)
14 Holders of Claims and Equity Interests entitled to vote copies of: (i) a cover letter from the Debtor
15 which described the contents of the Solicitation Package, explained that the Plan Supplement would
16 be filed on or before fifteen (15) days before the Voting Deadline, explained the solicitation process
17 and urged members of the Voting Classes to vote to accept the Plan; (ii) a letter from the Committee
18 that explained the solicitation process, highlighted the releases in the Plan and urged members of the
19 Voting Classes to vote to accept the plan; (iii) the Disclosure Statement together with the Plan and all
20 other exhibits annexed thereto; (iv) the Solicitation Procedures Order, excluding exhibits annexed
21 thereto; (v) notice of the confirmation hearing (the "Confirmation Hearing Notice"); and (vi) an
22 appropriate Ballot (as defined in the Solicitation Procedures Order) with a pre-addressed return
23 envelope (collectively, the "Voting Packages"); (2) the Office of the United States Trustee for the
24 District of Nevada, the District Director of the Internal Revenue Service, the Securities and Exchange
25 Commission, the Office of the United States Attorney for the District of Nevada, counsel to the
26 Committee, counterparties to executory contracts or unexpired leases and those parties requesting
27 notice pursuant to Bankruptcy Rule 2002 (to the extent such parties in interest did not otherwise
28 receive a Solicitation Package pursuant to the Solicitation Procedures Order) copies of (i) the

1 Disclosure Statement together with the Plan and all other exhibits annexed thereto; (ii) the
2 Solicitation Procedures Order without exhibits; and (iii) the Confirmation Hearing Notice
3 (collectively, the “Information Packages”); and (3) Holders of Claims in the Unimpaired Classes,
4 Holders of Unclassified Claims, and Holders of all other Claims or Equity Interests that did not
5 otherwise receive a Solicitation Package or Information Package pursuant to the terms of the
6 Solicitation Procedures Order, copies of (i) the Confirmation Hearing Notice and (ii) the Notice of
7 Non-Voting Status (as defined in the Solicitation Procedures Order) (collectively, the “Non-Voting
8 Packages,” and with the Voting Packages and the Information Packages, the “Solicitation Packages”).
9 The Solicitation Packages were transmitted and served as set forth in the Solicitation Affidavit, and
10 such transmittal and service of the Solicitation Packages constitutes due and sufficient notice of the
11 Plan, the Confirmation Hearing, and the deadlines for submitting Ballots (as defined in the
12 Solicitation Procedures Order) and filing objections to confirmation of the Plan. Such notice with
13 respect to the Solicitation Packages was adequate and sufficient under the circumstances, was given
14 in compliance with Bankruptcy Rules 2002, 3017 and 3020 and the Solicitation Procedures Order,
15 and given the notice with respect to the Solicitation Packages and the Publication Notice, no other or
16 further notice shall be required. All parties in interest in the Chapter 11 Case had a full and fair
17 opportunity to appear and be heard at the Confirmation Hearing.

18 F. Good Faith Solicitation. Votes to accept or reject the Plan were solicited fairly, in
19 good faith, and in compliance with the Solicitation Procedures Order, the Bankruptcy Code, the
20 Bankruptcy Rules, and all other applicable rules, laws and regulations. Based on the record of the
21 Chapter 11 Case, each of the Released Parties has acted in “good faith” within the meaning of section
22 1125(e) of the Bankruptcy Code and in compliance with the applicable provisions of the Bankruptcy
23 Code and the Bankruptcy Rules in connection with the solicitation of votes to accept the Plan.
24 Accordingly, the Released Parties are entitled to the protections afforded by section 1125(e) of the
25 Bankruptcy Code.

26 G. Acceptance of the Plan by Impaired Classes of Claims. As evidenced by the Voting
27 Affidavit, at least one Impaired Class of Claims entitled to vote on the Plan has voted to accept the
28 Plan, without counting the votes of any “insiders,” as such term is defined in section 101(31) of the

1 Bankruptcy Code. Specifically, Classes 3 and 4, which are Impaired Classes of Claims, have voted
2 to accept the Plan. While Class 5 has also accepted the Plan based upon the Voting Affidavit, the
3 Debtor agreed with Lead Plaintiffs that Lead Plaintiffs could cast a vote on behalf of the Securities
4 Plaintiffs. While the Debtor expressly retains any and all rights to challenge the Claims of the Lead
5 Plaintiffs and retained the right to challenge the manner in which Ballots are counted for purposes of
6 Class 5, for purposes of confirmation of the Plan, the Debtor will treat Class 5 as having rejected the
7 Plan. The Debtor did accept all non-conforming Ballots as acceptances or rejections of the Plan,
8 unless the Holder of the Claim or Equity Interest failed to indicate an acceptance or rejection of the
9 Plan on the Ballot.

10 H. Propriety of Various Agreements and Documents Relating to the Plan. In light of all
11 of the circumstances and the record in this Chapter 11 Case, each transaction contemplated in
12 connection with the Plan, as identified in the Plan, and any other document or agreement that is
13 necessary to implement the Plan, is integral to the terms, conditions and settlements set forth in the
14 Plan and is critical to the implementation of the Plan. All contracts, instruments, releases, agreements
15 and documents related to, or necessary to implement, effectuate and consummate the Plan, including
16 each transaction contemplated in the Plan, are valid, proper and reasonable under the circumstances
17 and due and sufficient notice thereof has been provided in connection with approval of the Disclosure
18 Statement and confirmation of the Plan.

19 I. Releases, Exculpations and Injunctions. Based upon the facts and circumstances of
20 this Chapter 11 Case, the releases, exculpations and injunctions set forth in Article XI of the Plan are
21 supported by good and valuable consideration, the adequacy of which is hereby confirmed, are fair,
22 equitable, and reasonable, are supported by the record of this Chapter 11 Case, and are in the best
23 interests of the Debtor, the Estate, and the Holders of Claims against and Equity Interests in the
24 Debtor.

25 J. Executory Contracts Deemed Assumed and Rejected. The Debtor has expressly set
26 forth in Paragraph 11 of the Confirmation Order those Executory Contracts to be assumed and
27 assigned to the Liquidating Trust. The Debtor will reject any remaining Executory Contracts. The
28 assumption and assignment of the Executory Contracts set forth in Paragraph 11 of the Confirmation

1 Order and the rejection by the Debtor of its remaining Executory Contracts that were not previously
2 assumed, assumed and assigned or rejected, as provided for in Article IX of the Plan, satisfies the
3 applicable provisions of the Bankruptcy Code, is supported by the Debtor's sound business judgment,
4 and is in the best interests of the Debtor and its Estate. The assumption and assignment of the
5 Executory Contracts set forth in Paragraph 11 of the Confirmation Order and the rejection of any
6 Executory Contract pursuant to the Plan shall be legal, valid, and binding as of the entry of the
7 Confirmation Order upon the Debtor, the Liquidating Trust and all non-Debtor parties to such
8 Executory Contract.

9 K. No Regulatory Authority Required. No registration under any applicable federal or
10 state securities laws to the fullest extent permissible under applicable non-bankruptcy law and under
11 bankruptcy law, including, without limitation, section 1145(a) of the Bankruptcy Code, is required to
12 implement the Plan. The beneficial interests in the Liquidating Trust shall be transferable only to
13 the extent that the transferability thereof would not require the Liquidating Trust to register the
14 beneficial interests under Section 12(g) of the Securities Exchange Act of 1934, as amended, and
15 otherwise shall not be transferable except as provided in the Liquidating Trust Agreement.

16 L. Compliance with Requirements of Section 1129 of the Bankruptcy Code. The Plan
17 satisfies all requirements for confirmation under section 1129 of the Bankruptcy Code.

18 (i) Section 1129(a)(1) – Compliance with Applicable Provisions of the
19 Bankruptcy Code. The Plan complies with all applicable provisions of the Bankruptcy Code as
20 required by section 1129(a)(1) of the Bankruptcy Code, including, without limitation, sections 1122
21 and 1123 of the Bankruptcy Code and Bankruptcy Rule 3016.

22 (ii) Section 1122 – Classification of Claims and Equity Interests. In accordance
23 with section 1122(a) of the Bankruptcy Code, each Class of Claims against and Equity Interests in the
24 Debtor contains only Claims or Equity Interests that are substantially similar to the other Claims or
25 Equity Interests within that Class. Valid business, factual and legal reasons exist for separately
26 classifying the various Classes of Claims against and Equity Interests in the Debtor under the Plan.

27 (iii) Section 1123(a) – Mandatory Provisions of the Plan. The Plan fully complies
28 with each requirement of section 1123(a) of the Bankruptcy Code, as set forth below:

1 a. Section 1123(a)(1). Article II of the Plan properly designates all
2 Claims and Equity Interests that require classification, as required by section 1123(a)(1) of the
3 Bankruptcy Code. Pursuant to section 1123(a)(1) of the Bankruptcy Code, Administrative Claims
4 and Priority Tax Claims are not required to be designated into Classes.

5 b. Section 1123(a)(2). In accordance with section 1123(a)(2) of the
6 Bankruptcy Code, Article II of the Plan specifies each Class of Claims or Equity Interests that is
7 Unimpaired under the Plan. In particular, Articles II and IV of the Plan provides that Classes 1
8 (Other Priority Claims) and 2 (Secured Claims) are Unimpaired under the Plan and sets forth their
9 treatment.

10 c. Section 1123(a)(3). In accordance with section 1123(a)(3) of the
11 Bankruptcy Code, Article IV of the Plan specifies the treatment of each Class of Claims and each
12 Class of Equity Interests that is Impaired under the Plan. In particular, Article IV of the Plan
13 specifies the treatment of Classes 3 (General Unsecured Claims), 4 (Noteholders' Securities Claims),
14 5 (Shareholders Securities' Claims) and 6 (Equity Interests).

15 d. Section 1123(a)(4). In accordance with section 1123(a)(4) of the
16 Bankruptcy Code, Article IV of the Plan provides the same treatment for each Claim or Equity
17 Interest in a given Class unless the Holder of such Claim or Equity Interest agrees to less favorable
18 treatment.

19 e. Section 1123(a)(5). In accordance with section 1123(a)(5) of the
20 Bankruptcy Code, Article VI of the Plan provides adequate means for the Plan's implementation. For
21 example, the Plan provides, *inter alia*, for the funding and establishment of the Liquidating Trust and
22 the automatic transfer of the Liquidating Trust Assets into the Liquidating Trust as set forth more
23 fully in Article VI of the Plan. The Liquidating Trustee shall be vested with the right to liquidate the
24 assets and make Distributions to Holders of Allowed Claims and Allowed Equity Interest, in
25 accordance with the Plan. Accordingly, the Plan satisfies the requirements set forth in Section
26 1123(a)(5) of the Bankruptcy Code.

27 f. Section 1123(a)(6). Because the Debtor is liquidating under the Plan
28 and dissolved as of the Effective Date, the Debtor is not issuing any new charter or other

1 organizational document. Therefore, section 1123(a)(6) of the Bankruptcy Code is inapplicable to
2 the Plan.

3 g. Section 1123(a)(7). By incorporating the Plan Supplement, the Plan
4 satisfies the requirements set forth in 1123(a)(7) of the Bankruptcy Code. The Liquidating Trustee,
5 Michael D. Kang of Alvarez & Marsal North America LLC, and the members of the Liquidating
6 Trust Advisory Board are identified in the Plan Supplement. In addition, the fee arrangements for the
7 Liquidating Trustee and Liquidating Trust Advisory Board are set forth in the form of Liquidating
8 Trust Agreement filed as part of the Plan Supplement. The background and qualifications of Mr.
9 Kang and the members of the Liquidating Trust Advisory Board were also included in the Plan
10 Supplement.

11 (iv) Section 1123(b) – Discretionary Provisions of the Plan. In accordance with
12 section 1123(b)(6) of the Bankruptcy Code, the Plan does not contain any discretionary provision that
13 is inconsistent with the applicable provisions of the Bankruptcy Code.

14 (v) Bankruptcy Rule 3016. Identification of the Plan; Conspicuous Injunction. In
15 accordance with Bankruptcy Rule 3016(a), the Plan is dated and identifies the Debtor as the entity
16 submitting it as proponent. Other than conduct otherwise enjoined by the Bankruptcy Code, the Plan
17 describes in specific and conspicuous language all acts to be enjoined and identifies the parties
18 subject to such injunction, in accordance with Bankruptcy Rule 3016(c).

19 (vi) Section 1129(a)(2) – Compliance by the Debtor with Applicable Provisions of
20 the Bankruptcy Code. The Debtor has complied with all applicable provisions of the Bankruptcy
21 Code, including, without limitation, sections 1123, 1125 and 1126 of the Bankruptcy Code and
22 Bankruptcy Rules 3017, 3018 and 3019. The procedures by which the Ballots for acceptance or
23 rejection of the Plan were solicited and tabulated were fair, properly conducted, and in accordance
24 with sections 1125 and 1126 of the Bankruptcy Code, Bankruptcy Rules 3017 and 3018, the
25 Solicitation Procedures Order, and any and all other applicable rules, laws and regulations. Votes
26 with respect to the Plan were solicited in good faith and in a manner consistent with the Bankruptcy
27 Code, the Bankruptcy Rules, the Solicitation Procedures Order, and all other applicable rules, laws
28 and regulations.

1 Based on the record before the Court, the Released Parties have solicited votes on the
2 Plan and have participated in the activities described in section 1125 of the Bankruptcy Code in good
3 faith, within the meaning of section 1125(e) of the Bankruptcy Code, and in compliance with the
4 applicable provisions of the Solicitation Procedures Order, the Bankruptcy Code, the Bankruptcy
5 Rules, and all other applicable rules, laws and regulations and, accordingly, the Released Parties are
6 entitled to the protections afforded by section 1125(e) of the Bankruptcy Code and the exculpation
7 provisions set forth in Article XI of the Plan.

8 (vii) Section 1129(a)(3) – The Debtor Has Proposed the Plan in Good Faith. The
9 Debtor has proposed the Plan in good faith and not by any means forbidden by law. Consistent with
10 the overriding purpose of chapter 11 of the Bankruptcy Code, the Plan is designed to allow the
11 Debtor to liquidate while maximizing recoveries to its creditors and equity holders. In determining
12 that the Plan was proposed in good faith, the Court has examined the totality of the circumstances
13 surrounding the filing of the Chapter 11 Case, the Plan itself, and the process leading to its
14 formulation. Based on the foregoing, the facts and record of this Chapter 11 Case, the Disclosure
15 Statement and the record of the Confirmation Hearing, the Plan has been proposed in good faith and
16 not by any means forbidden by law, thereby satisfying section 1129(a)(3) of the Bankruptcy Code.

17 (viii) Section 1129(a)(4) – Court Approval of Certain Administrative Expense
18 Payments. In accordance with section 1129(a)(4) of the Bankruptcy Code, no payment for services
19 or costs and expenses in or in connection with the Chapter 11 Case, or in connection with the Plan
20 and incidental to the Chapter 11 Case, including Professional Fee Claims, has been or will be made
21 by the Debtor other than payments that have been authorized by order of the Court. Articles III and
22 VII of the Plan provides for the payment of various Administrative Claims which are subject to the
23 Court's approval and the standards of the Bankruptcy Code. Accordingly, the provisions of the Plan
24 comply with section 1129(a)(4) of the Bankruptcy Code.

25 (ix) Section 1129(a)(5) – Disclosure of Identity of Officers and the Compensation
26 of Insiders. The Debtor has provided the information required under section 1129(a)(5) by
27 identifying the Liquidating Trustee and the members of the Liquidating Trust Advisory Board in the
28 Plan Supplement, including the Liquidating Trustee's and the Liquidating Trust Advisory Board's

1 proposed fee arrangement (as set forth in the proposed Liquidating Trust Agreement included in the
2 Plan Supplement) and background information relating to the Liquidating Trustee and the members
3 of the Liquidating Trust Advisory Board (as included in the Plan Supplement). No officer or director
4 of the Debtor will continue after the Effective Date. The Debtor will be deemed dissolved as of the
5 Effective Date in accordance with Article 6.9 of the Plan, and the Debtor's officers and directors will
6 be deemed to have resigned as of the Effective Date. Accordingly, the Plan satisfies the requirements
7 of section 1129(a)(5) of the Bankruptcy Code.

8 (x) Section 1129(a)(6) – Approval of Rate Changes. The Plan does not provide
9 for any rate changes subject to the jurisdiction of any governmental regulatory commission.
10 Accordingly, section 1129(a)(6) of the Bankruptcy Code is inapplicable to the Plan.

11 (xi) Section 1129(a)(7) – Best Interests of Holders of Claims and Equity Interests.
12 The Plan satisfies the “best interests of creditors” test under section 1129(a)(7) of the Bankruptcy
13 Code. With respect to each Impaired Class of Claims or Equity Interests, each Holder of an Allowed
14 Claim or an Allowed Equity Interest in such Class has either accepted the Plan or will receive or
15 retain under the Plan, on account of such Claim or Equity Interest, property of a value, as of the
16 Effective Date, that is not less than the amount such Holder would receive or retain if the Debtor was
17 liquidated on the Effective Date pursuant to chapter 7 of the Bankruptcy Code. Accordingly, the Plan
18 satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code.

19 (xii) Section 1129(a)(8) – Acceptance of the Plan by Each Impaired Voting Class.
20 As indicated in Article II of the Plan, Classes 1 and 2 are Unimpaired under the Plan and are
21 conclusively presumed to have accepted the Plan pursuant to section 1126(f) of the Bankruptcy Code.
22 Classes 3 and 4, which are Impaired Classes of Claims, have voted to accept the Plan. Classes 5 and
23 6, which are Impaired Classes of Claims and Equity Interests, respectively, have voted to reject the
24 Plan (or, for Class 5, as noted herein, such Class is being treated as rejecting the Plan for
25 confirmation purposes). The Debtor intends to proceed with confirmation of the Plan under section
26 1129(b) of the Bankruptcy Code given that Classes 5 and 6 rejected the Plan.

(xiii) Section 1129(a)(9) – Treatment of Claims Entitled to Priority. The Plan provides for the treatment of Claims entitled to priority pursuant to sections 507(a)(2)-(8) of the Bankruptcy Code in the manner required by section 1129(a)(9) of the Bankruptcy Code.

(xiv) Section 1129(a)(10) – Acceptance by at Least One Impaired, Non-Insider Class. In accordance with the requirements of section 1129(a)(10) of the Bankruptcy Code and as evidenced by the Voting Affidavit, at least one Impaired Class of Claims under the Plan has accepted the Plan, excluding the votes of insiders. As noted herein, Classes 3 and 4, which are Impaired Classes, have voted to accept the Plan (excluding the votes of insiders). Accordingly, the Plan satisfies the requirements of section 1129(a)(10) of the Bankruptcy Code.

(xv) Section 1129(a)(11) – Feasibility of the Plan. The Plan adequately provides the means for the Debtor's liquidation. The Plan provides funding for the Liquidating Trust to liquidate the remaining assets vested in the Liquidating Trust and, to the extent applicable, to make the necessary Distributions under the Plan. The Plan further provides a mechanism for the time and method of Distributions. See Plan, Article VII. The Plan is feasible because it: (i) provides the financial wherewithal necessary to implement the Plan; and (ii) offers reasonable assurance that the Plan is workable and has a reasonable likelihood of success. Accordingly, the Plan satisfies the requirements of feasibility under section 1129(a) of the Bankruptcy Code.

(xvi) Section 1129(a)(12) – Payment of Statutory Bankruptcy Fees. Article 3.2 of the Plan provides for the payment, on or before the Effective Date, of any fees due pursuant to section 1930 of title 28 of the United States Code or other statutory requirement. Therefore, the Plan meets the requirements of section 1129(a)(12) of the Bankruptcy Code.

(xvii) Section 1129(a)(13) – Treatment of Retiree Benefits. The Debtor has no obligations to provide any such retiree benefits, and accordingly, section 1129(a)(13) of the Bankruptcy Code is inapplicable to the Plan.

(xviii) Sections 1129(a)(14)-(16) – Domestic Obligations, Individual Debtor, or Nonprofit Corporation or Trusts. The Debtor is not (a) required to pay any domestic support obligations, (b) an individual, or (c) a nonprofit corporation or trust. Accordingly, sections 1129(a)(14) through (16) of the Bankruptcy Code are not applicable to the Plan.

(xix) Section 1129(b) - The Plan Is Fair and Equitable with Respect to the Impaired Classes That Voted to Reject the Plan. The Plan is fair and equitable with respect to the Classes of Impaired Claims rejecting the Plan, as required by Section 1129(b)(1) of the Bankruptcy Code. Thus, the Plan may be confirmed notwithstanding the Debtor's failure to satisfy section 1129(a)(8) of the Bankruptcy Code. The Plan satisfies the "fair and equitable" requirement as to Classes 5 and 6, which voted to reject the Plan. With respect to Class 5 (which, for confirmation purposes, is treated as rejecting the Plan), this Class consists of the Shareholders' Securities Claims, which are subordinate to the Holders of Claims in Classes 3 and 4. The Holders of Allowed Shareholders' Securities Claims will receive their Pro Rata share of the Liquidating Trust Assets after payment in full in cash and/or other distributable property, as applicable, of all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims, Allowed Secured Claims, Allowed General Unsecured Claims, Allowed Noteholders' Securities Claims and any expenses of the Liquidating Trust. Allowed Class 5 Claims are treated *pari passu* with the Allowed Class 6 Equity Interests in accordance with section 510(b) of the Bankruptcy Code. With respect to Class 6, this Class consists of the Holders of Equity Interests, which are subordinate to the Holders of Claims in Classes 3 and 4 and, pursuant to section 510(b) of the Bankruptcy Code, *pari passu* with the Holders of Claims in Class 5 (Shareholders' Securities Claims). The Holders of Allowed Equity Interests will receive their Pro Rata share of the Liquidating Trust Assets after payment in full in cash and/or other distributable property, as applicable, of all Allowed Administrative Claims, Allowed Priority Tax Claims, Allowed Other Priority Claims, Allowed Secured Claims, Allowed General Unsecured Claims, Allowed Noteholders' Securities Claims and any expenses of the Liquidating Trust. There are no Classes junior to Classes 5 and 6 that will receive Distributions before all Allowed Class 5 and 6 Claims and Equity Interests are paid in full. Additionally, Holders of Claims in Classes senior to Classes 5 and 6 will not receive more than 100% of the value of their Allowed Claims. Accordingly, the Plan satisfies the requirements of sections 1129(b)(2)(B) and 1129(b)(2)(C) for the Impaired Classes that voted to reject the Plan and, therefore, is fair and equitable with respect to those Classes.

(xx) Section 1129(b) - The Plan Does Not Discriminate Unfairly with Respect to the Impaired Classes That Have Rejected the Plan. The Plan does not discriminate with respect to the

1 Classes of Impaired Claims rejecting the Plan, as required by Section 1129(b)(1) of the Bankruptcy
2 Code. Thus, the Plan may be confirmed notwithstanding the Debtor's failure to satisfy section
3 1129(a)(8) of the Bankruptcy Code. The Debtor has separately classified Classes 5 and 6, which
4 rejected the Plan (with respect to Class 5, such Class is being treated as rejected for confirmation
5 hearing purposes), from all other Impaired Classes Claims, specifically Class 3 Claims (General
6 Unsecured Claims) and Class 4 Claims (Noteholders' Securities Claims), all of which are entitled to
7 be paid before Classes 5 and 6. Once all Allowed Claims that are senior to Classes 5 and 6 are paid
8 in full or as provided for under the Plan, the Holders of Allowed Class 5 and 6 Claims and Equity
9 Interests will be entitled to receive a Distribution under the Plan and in accordance with the priorities
10 established under the Bankruptcy Code. Therefore, the Plan does not unfairly discriminate with
11 respect to the Impaired Classes, and the cram down test of section 1129(b) is satisfied.

12 (xxi) Section 1129(d) – Principal Purpose of the Plan. The principal purpose of the
13 Plan is not the avoidance of taxes or the avoidance of the application of section 5 of the Securities
14 Act of 1933 (the "Securities Act"), and no party in interest has filed an objection alleging otherwise.
15 Accordingly, the Plan satisfies the requirements of section 1129(d) of the Bankruptcy Code.

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1 RESPECTFULLY PREPARED AND SUBMITTED BY:

2 /s/ Nancy A. Peterman

3 KEITH J. SHAPIRO, ESQ.

4 NANCY A. PETERMAN, ESQ.

5 Illinois Bar No. 6208120

6 GREENBERG TRAURIG, LLP

7 77 West Wacker Drive, Suite 3100

8 Chicago, Illinois 60601

9 Telephone: 312-456-8400

Facsimile: 312-456-8435

Email: shapirok@gtlaw.com

Email: petermann@gtlaw.com

and

10 BOB L. OLSON, ESQ.

11 Nevada Bar No. 3783

12 GREENBERG TRAURIG, LLP

13 3773 Howard Hughes Parkway, Suite 400 North

14 Las Vegas, Nevada 89169

Telephone: 702-792-3773

Facsimile: 702-792-9002

Email: olsonb@gtlaw.com

15 *Counsel for Debtor and Debtor-in-Possession*

CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE 9021

In accordance with Local Rule 9021, counsel submitting this document certifies as follows

(check one):

- ☐ The court has waived the requirement of approval under LR 9021.
- ☐ This is a chapter 7 or 13 case, and either with the motion, or at the hearing, I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

- ☒ This is a chapter 9, 11, or 15 case, and I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

CHRIS DONOHO and CATHERINE YU, on behalf of the COMMITTEE -
-- APPROVED

ROBERT KINAS and BLAKELY GRIFFITH, on behalf of the
COMMITTEE -- NO RESPONSE

JOHN K. LYONS, FRANCES KAO and BRADLEY WILSON, on behalf
of the SPECIAL COMMITTEE OF THE BOARD -- NO RESPONSE

JENNIFER SMITH, on behalf of the SPECIAL COMMITTEE OF THE
BOARD -- NO RESPONSE

STEVE DOLLAR, on behalf of the INDEPENDENT MEMBERS OF THE
BOARD -- NO RESPONSE

IRA LEVEE and MICHAEL ETKIN, on behalf of the BANKRUPTCY
COUNSEL FOR THE LEAD PLAINTIFFS AND THE PUTATIVE
CLASS -- NO RESPONSE

SANDRA LAVIGNA, on behalf of the SECURITIES AND EXCHANGE
COMMISSION -- NO RESPONSE

WILLIAM COSSITT, on behalf of the OFFICE OF THE U.S. TRUSTEE --
NO RESPONSE

- ☐ I certify that I have served a copy of this order with the motion, and no parties appeared or filed written objections.